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**(1973) 08 AHC CK 0003**  
**In the Allahabad High Court**  
**Case No : Criminal Rev. No. 1011 of 1970**

Om Prakash Sharma

APPELLANT

Vs

Surendra Kumar and others

RESPONDENT

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**Date of Decision :** 08-08-1973

**Acts Referred:**

Copyright Act, 1957 — Section 63  
Criminal Procedure Code, 1898 (CrPC) — Section 540

**Citation :** (1973) 43 AWR 462

**Hon'ble Judges :** G.C. Mathur, J

**Bench :** Single Bench

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## Judgement

G.C. Mathur, J.—Surendra Kumar opposite party No. 1, filed a complaint u/s 63 of the Copy Right Act against the Applicant Om Prakash Sharma and opposite party No. 2 Mahendra Pratap Garg and some others. It is not necessary to go into the facts of the case. On 27-1-1970 accused Mahendra Pratap Garg moved an application for summoning two witnesses u/s 540 Code of Criminal Procedure. This application was rejected by the Magistrate on the same day on the ground that adequate opportunity had already been given to the accused to produce the witnesses. Mahendra Pratap Garg moved another application on 30-1-1970 for the same relief. This application was allowed by the Magistrate on 31-1-1970. A revision was filed before the Sessions Judge, Allahabad, by Om Prakash Sharma, the co-accused. At the hearing of this revision three points were urged before I Addl. Distt. and Sessions Judge, who heard the revision. The first point; was that the Magisterial had no jurisdiction in the matter as a reference ought to have been made to the Copy Right Board u/s 6 of the Copy Right Act. This contention was rightly rejected by the Sessions Judge. A reference u/s 6 is required to be made only when question arise Under Sections 3 and 5 of the Act, Section 6 has no relevance to a prosecution u/s 63 of the Act.

2. The second point urged was that a second application for examination of the same Witnesses u/s 540, Code of Criminal Procedure was barred. This contention was also rightly rejected by the Sessions Judge. The Sessions Judge has rightly

observed that both the orders of 17-1-1970 and of 31-1-1970, were in the nature of interlocutory orders and were not orders on the merits. The mere fact that at one stage the Magistrate did not consider it necessary to examine certain witnesses u/s 540 Code of Criminal Procedure did not preclude him from examining the witnesses u/s 50 Code of Criminal Procedure at a later stage.

3. The last contention raised before the Sessions Judge was that the criminal prosecution was undesirable when a number of civil suits were pending between the parties. This contention was rightly rejected by the Sessions Judge. The pendency of the civil suits will not coin in the way of a prosecution u/s 63 of the Copy Right Act, if an offence under that Section had been committed by the accused.

4. In my opinion, the revision was rightly rejected by the Sessions Judge. This revision is without force and is hereby dismissed. The stay order is vacated.